

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ACTION SOFTWARE, INC.,	)	Case No.: 1:06 CV 1400
	)	
Plaintiff	)	
	)	
v.	)	JUDGE SOLOMON OLIVER, JR.
	)	
EMART LLC., <i>et al.</i> ,	)	
	)	
Defendants	)	<u>ORDER</u>

On September 14, 2007, at 1:00 p.m., the court held a telephonic conference in the within case. The conference was held on the record and was attended by Plaintiff's counsel, Alek El-Kamhawy, Defendant Michael Fooks ("Fooks"), appearing on his own behalf and as an officer of Defendant Emart LLC, and John S. Kluznik, Sr. ("Kluznik"), who previously withdrew as counsel for Defendants. At the conference, Plaintiff's counsel made an oral motion, without objection, to dismiss Plaintiff's remaining state law conversion claim without prejudice. The motion was granted. In addition, Fooks indicated that, despite the motion he filed after the telephone conference on September 7, 2007 (*see* ECF No. 53), Defendants wished to dismiss all three of their counterclaims and to reserve their right to pursue attorney's fees based on Plaintiff's copyright infringement claim. Defendants' oral motion at the telephone conference to dismiss all of their counterclaims without prejudice was granted. There was no objection by Plaintiff. As no claims or counterclaims remain, the within case is hereby dismissed.

Kluznik indicated that he and David G. Arnold will be appearing on Defendants' behalf and drafting the motion on attorney's fees for Defendants. As indicated at the conference, Defendants' brief on the issue of attorney's fees is due by September 29, 2007; Plaintiff's Opposition Brief is due by October 19, 2007; and Defendants' Reply Brief is due by October 29, 2007.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.  
UNITED STATES DISTRICT JUDGE

September 17, 2007